



ORO LOMA SANITARY DISTRICT

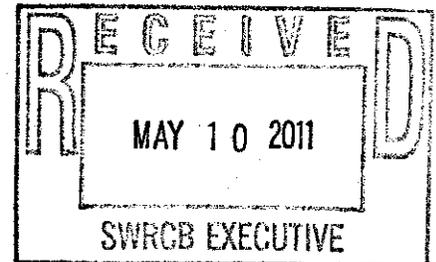
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April 22, 2011

Via email: commentletters@waterboards.ca.gov

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, Sacramento, CA 95814



SUBJECT: COMMENT LETTER – SSS WDRS REVIEW & UPDATE

Dear Ms. Townsend:

Oro Loma Sanitary District appreciates the opportunity to comment on the State Water Quality Control Board's proposed revisions to the Sanitary Sewer System Waste Discharge Requirements (SSS WDRs). Our agency owns 280 miles of collection system. Our agency has won the "CWEA State Collection System of the Year" award three out of the past ten years. In 2010, our District operated without a single overflow for the first time in our District's history.

Our success in 2010 is the culmination of efforts over the past two decades. We began these efforts in advance of the SSMP requirements and had nearly all elements of the SSMP in place prior to their requirement by law. This information is useful because our agency may show the trajectory for other agencies who have been given time to implement the elements of the existing SSMP. In short, the current guidelines are satisfactory to achieving water quality objectives. Agencies need time to implement all of the program elements and identified improvements.

The proposed revisions to the SSS WDRs represent a major departure from the program that has been successfully implemented under the existing SSS WDRs. While we appreciate the State Water Board's efforts to address certain issues associated with the existing WDRs, our agency is concerned about a number of the proposed revisions, especially those related to reporting of private lateral sewage discharges (PLSDs), and onerous additions to sewer system management plan (SSMP) requirements that should not be mandated unless State Water Board guidance and funding is made available. Also, we strongly oppose any kind of NPDES permitting approach.

1. Sanitary sewer system regulations should not be adopted under a two-tiered WDRs and NPDES permit.

We strongly oppose the two-tiered WDRs and NPDES permit alternative, whereby an SSO occurring previously or in the future would trigger the requirement to apply for an NPDES

permit, and we agree with several points included in the Staff Report also opposing an NPDES permit. Since the existing SSS WDRs and the proposed revisions to the SSS WDRs do not authorize sanitary-sewer overflows (SSOs) to waters of the United States, there is no need for an NPDES permit. The result of triggering an NPDES permit would subject local public agencies to additional and more egregious non-governmental organization (NGO) lawsuits and higher administrative penalties with absolutely no demonstration that this would improve water quality or further reduce SSOs. As you may know, several NGOs in the San Francisco Bay Region have already taken advantage of municipal government agencies, including the use of aggressive and shocking tactics, and pocketed precious funds that could have and should have been used for reducing SSOs. We do not believe it is good public policy to increase an agency's exposure to such liability.

As described in the Staff Report, this alternative would also require significant additional Water Board staff resources to track and implement the different permit tiers. In our day-to-day conversations and interactions with Board staff, we see the tremendous workload that they face. Is it appropriate to add additional administrative requirements under these conditions? Does this serve the interests of water quality?

We would also like to reinforce concerns about confusion and wasted resources resulting from adopting an NPDES permit component now, that may need to be revised again if the United States Environmental Protection Agency (USEPA) implements an NPDES permit for satellite sanitary sewer systems later. As a collection system operating in the San Francisco Bay Region, we can speak to this issue with experience; the 2006 statewide requirements included in the existing SSS WDRs were different from our established regional program. In developing our SSMP, we had to sift through and identify strategies that addressed *both* sets of requirements. Changes to reporting requirements made everything more confusing. As requirements become more complicated and confusing, more agency staff time is directed towards preparing reports and re-organizing information and operating procedures, and less time is spent actually managing or conducting the appropriate operations and maintenance (O&M) activities to prevent SSOs and properly maintain the collection system.

2. The basis for mandatory reporting of PLSDs is not justified and creates an inappropriate burden for public agency staff.

Water Board staff has not provided adequate justification to require public agencies to report PLSDs that are not affiliated with the collection system agency. As wastewater professionals, with decades of experience, we have observed many private sewer spills. In nearly every case, private spills result in very small volumes and remain localized around the spill location (i.e. front grass or landscaping). These spills are not a water quality issue.

Requiring the reporting of private lateral spills would add 100-200 hours of additional man-hours (on an existing base of 10,000 total hours) at our agency. The additional reporting would result in a reduction of regular collection system maintenance.

We believe the more useful and less onerous requirement would be to report any private sewer lateral that reaches a water body or storm inlet. We believe that this requirement would both

demonstrate that private lateral spills do not represent a water quality concern and would lessen the burden of the proposed requirement.

Moreover, the Staff Report includes a reference to a study that indicated that the total volume of sewage from private laterals is about 5% of the total volume from SSOs, almost all of which never pose a threat to waters. Requiring public agencies to provide detailed information regarding such a small percentage of overflow volumes from parts of the system over which they have no control is not appropriate and would divert limited staff resources from higher priority issues that actually protect waters.

3. It is essential that State and Regional Water Board staff consider the reasons for each SSO in any enforcement action.

The existing SSS WDRs included language in Provision D.6 that provided some reassurance that, in the case of an SSO enforcement action, the State and/or Regional Water Board would consider why the SSO might have occurred and to what extent it would have been reasonably possible for the Enrollee to prevent it.

Existing language reads: "*In assessing these factors, the State and/or Regional Water Boards will also consider whether...*" (emphasis added)

In the proposed revisions to the SSS WDRs, this language was changed to read: "*In assessing these factors, the State and/or Regional Water Boards may also consider whether...*" (emphasis added)

The proposed revisions to the SSS WDRs would transform the existing enforcement discretion language, which expresses a clear statement of the State Board's intent regarding enforcement priorities and responses, into a purely advisory provision, which individual regional boards are free to follow or ignore as they choose. The factors described in (a) through (g) of Provision D.6 are highly relevant to the Enrollee's efforts to properly manage, operate and maintain its system and these factors should definitely be considered in enforcement actions.

It is imperative that the existing language be retained. Enrollees should not be made to suffer consequences for conditions that are outside their reasonable control.

4. Significant additional Sewer System Management Plan (SSMP) requirements should not be mandated until the State Water Board provides guidance and funding.

The proposed "Risk and Threat Analysis" and "Staff Performance Assessment Program" are vague, not statistically supported, unnecessarily complicated, and overly prescriptive.

The proposed Risk and Threat Analysis of all sanitary sewer assets would be complex and resource-intensive, and would not provide incrementally more benefit than that provided by an otherwise well-operated and managed system. This program should also only be required if and when adequate Water Board guidance has been developed and funding is provided.

Requiring development and implementation of the proposed Staff Assessment Program on an agency-by-agency basis is unrealistic. The expectations outlined in the proposed revisions to the SSS WDRs suggest that agency staff would be responsible for developing a program similar to the existing Technical Certification Program offered by the California Water Environment Association, which would require a substantial investment of resources to do redundant work at each agency. It is also not appropriate to require public agencies to train contractors (which are separate, private entities).

The Water Board should not implement these new requirements until detailed program guidance is provided. Also, Water Board staff has not demonstrated that the current training requirements are deficient.

5. SSMP sections (i) and (j) should be combined, because otherwise the requirements for routine review and revisions of the SSMP are redundant and contradictory.

SSMP Section (i) *Performance Targets and Program Modifications* and Section (j) *SSMP Program Audits* both require the Enrollee to evaluate the effectiveness of the SSMP and correct or update the document as necessary. Section (i) indicates that this process is to occur on an annual basis, while Section (j) specifies a minimum frequency of once every two years. We recommend that Water Board staff combine these two sections and clarify the requirements.

6. The findings include several incorrect statements about PLSDs.

Finding 7 in the proposed revisions to the SSS WDRs includes the statement: "SSOs and PLSDs may pollute surface or ground waters, threaten beneficial uses and public health, ..." We disagree that PLSDs are in the same category as SSOs from mainline sewers in terms of water quality impacts. These overflows are very small in volume individually, and overall.

7. Requiring de-chlorination of clean-up water is counter-productive.

Prohibition C.3 indicates that potable water would have to be de-chlorinated before it could be used for spill clean-up (in the event water used for clean-up is not fully recovered). Putting restrictions on the use of potable water in cleaning up an SSO that is otherwise likely to violate either of the first two prohibitions simply adds further unnecessary challenges. In addition, the amount of potable water used, combined with the distance it would have to travel to reach a surface water (so the chlorine would readily degrade) does not warrant the additional on-site operational difficulty in dechlorination.

Best practice allows an agency to both wash down an impacted surface and collect the water at the downstream storm inlet. The proposed prohibition limits this best practice which has human health benefits and no water quality impacts. A prohibition from using potable water to rinse an unsanitary surface does not pass basic tests of common sense. Most summer time storm flows come from chlorinated irrigation overspray. Compared to these volumes, the amount of wash water used to clean up sewer spills is negligible and carries significant benefits.

We believe that the proposed revisions should state that wash water should be collected, prior to release into the environment, when feasible.

8. It is inappropriate to use incomplete information about PLSDs to characterize sanitary sewer system condition and management.

We do not believe that meaningful statistics could be derived from data collected only for those PLSDs that an agency becomes aware of, and we do not support the idea that Water Board staff would decide that collection systems have “systemic issues” based on these incomplete data sets.

The requirement for Enrollees to report PLSDs they become aware of should be removed from Provision 4.

9. Provision 8 includes an incorrect assumption regarding sanitary sewer system replacement.

Provision 8 suggests that sanitary sewer systems will need replacing within the timeframe of these WDRs. The reference to “eventual replacement” should be removed because the need to replace sewers is dependent on several factors. Clay pipe has shown service life of hundreds of years. There is no known failure mechanism for a properly installed HDPE sewer pipe. Sewers should not be replaced automatically when they reach a certain age, especially when they are in good condition and functioning as designed. This would not be a good use of limited public resources.

10. Definitions related to private laterals are confusing and contradictory.

The following definitions are confusing and contradictory, as explained in the following paragraphs.

- *Private Lateral – Privately owned sewer piping that is tributary to an Enrollee’s sanitary sewer system. The responsibility for maintaining private laterals can be solely that of the Enrollee or private property owner; or it can be shared between the two parties. Sewer use agreements dictate lateral responsibility and the basis for the shared agreement.* (emphasis added)

This definition does not make reference to upper laterals and lower laterals and is therefore confusing. Also, it is misleading to state that sewer use agreements dictate lateral responsibility, as these agreements seldom exist for individual homeowners.

These definitions should be reworked for clarity and accuracy.

11. Revisions to SSMP requirements are premature.

We are concerned that the proposed revisions to the SSS WDRs include *significant* changes to SSMP program requirements. We strongly urge that the existing SSMP requirements be preserved as in the existing SSS WDRs. As the Staff Report indicates, development and implementation of SSMPs by SSS WDRs enrollees has just been completed and these plans need to be fully implemented so their effectiveness can be properly identified. Further, it is recognized that dramatically changing SSMP requirements before full implementation will likely lead to confusion regarding the SSMP requirements among enrollees, the public, and Water Board staff. As stated previously, our agency has practiced the SSMP elements well before they became a requirement. Because of our early start, we have a high performing system. The Board should allow other agencies time to implement the existing best management practices before making a significant regulatory change.

12. Language describing SSMP requirements should be revised as follows (SSMP sections are listed in the order they appear in the proposed revisions to the SSS WDRs):

- *Organization* - Including names, email addresses, and telephone numbers for the staff described in paragraph (b) (ii) is excessive information and inappropriate in a public document. Only the position and phone number should be included.
- *Legal Authority* – Paragraph (c) (v) should be revised to read: “Ban new connections under certain conditions.” In addition, Paragraph (c) (vi) indicates that agencies must have legal authority to “limit the discharge of roots...” It is not clear if this phrase is intended to refer to limiting root intrusion (which would be covered by good standard specifications), or to limiting the illicit discharge of debris including cut roots (which is already included in paragraph (c) (i)). In any case, the word “roots” should be removed from this paragraph.
- *Operations and Maintenance Program*
 - *Map* - Updating sewer system maps to identify and include all backflow prevention devices would be too onerous as they are not owned by the agency; this requirement should be removed.
 - *Rehabilitation and Replacement* - The third sentence in paragraph (d) (iii) should be revised to read: “Rehabilitation and replacement shall focus on sewer pipes that are at risk of collapse or prone to more frequent blockages due to pipe defects.” It is not correct to imply that age alone is problematic. We know that it does not, nor is it correct to imply ‘aging’ is the same as ‘deteriorating’.
- *Design and Performance Provisions* – The addition of the phrase “all aspects of” in both paragraphs (i) and (ii) should be removed; requiring each agency to update their standards and specifications to cover every last possible minor detail of sanitary sewer system construction and inspections just to meet this requirement would create an unwarranted burden on staff. Also, the phrase is not necessary and is already implied.

- *FOG Control Program* – Proposed revisions to (g) (iii) would simultaneously require legal authority to prohibit FOG discharges to the system and to require FOG dischargers to implement measures to prevent SSOs and blockages caused by FOG. This revised language contradicts itself, first by indicating that FOG discharges are to be prohibited, and then by including requirements for FOG dischargers. Also, the language appears to apply to both residential and commercial sources of FOG, but fails to recognize that logistical challenges may outweigh the benefits of *requiring* best management practices for residential FOG sources. We request that this existing language be preserved: “This plan shall include the following as appropriate: The legal authority to prohibit discharges to the system and identify measures to prevent SSOs and blockages caused by FOG.”
- *Performance Targets and Program Modifications* – Progress towards improving sewer system performance and reducing impacts of SSOs is already described in the SSMP and will be adequately characterized by a review of SSO trends. Also, without specific guidance on how to develop these targets, the requirement is vague and offers no validation of success or failure. All references to performance targets should be removed from paragraphs (i) and (j).
- *Communication Program* – The proposed revisions to the SSS WDRs would require each agency to communicate with the public on an annual basis regarding the development, implementation, and performance of its SSMP. This specified timeframe suggests that an agency would send out a notice of some sort at a certain time each year, but would not apply to agencies that communicate information to the public primarily via their websites; online information is made available 24 hours a day. The original language should be retained as is.

13. Omission of Construction Trenches within the definition of Sanitary Sewer System.

The original SSO WDR included construction trenches within the definition of Sanitary Sewer System. The proposed definition, which omits construction trenches, will have serious consequences for all sewer systems in the State. This proposed definition, combined with the lack of de minimis spill volume, will cause an agency to report an SSO every time they perform sewer rehabilitation, perform a spot repair, or when a lateral is connected to the main.

Work inside construction trenches represents a proactive effort to build and maintain a sewer system. A definition which penalizes these efforts works against the purposes of the proposed regulations.

14. Notification requirements need to be clarified.

We support the Staff Report’s indication that only Cal EMA would need to be notified when spills to surface water of any volume occur. However, Paragraph G.4 indicates that Enrollees are to provide immediate notification of SSOs to the local health officer or the local director of environmental health, contrary to the instructions indicated in Section A of the Monitoring and

Reporting Program and the Staff Report. Please clarify that notification shall only be made to Cal EMA, and indicate that Cal EMA will notify other agencies.

15. Enrollees should not be required to report SSOs if they are fully-recovered.

Fully-recovered SSOs cannot impact surface waters, and it is unlikely that they would impact public health. Therefore, they should not have to be reported to CIWQS. Not having to report these SSOs provides agencies incentive to implement timely response plans and build capacity to fully recover overflows when they do occur.

16. A *de minimis* spill volume for reporting should be allowed.

SSO reporting requirements do not apply to systems that do not meet the defined size threshold, recognizing that any spills from these systems would be insignificant, and therefore not worth reporting. Reporting of *de minimis* spill volumes from Enrollees' systems is likely equally insignificant in their potential impacts to public health and the environment. The limited value of information regarding the physical condition and adequacy of collection system operation and maintenance obtained from reporting very small spill volumes does not warrant the staff resources required to make these reports. We request that overflows of less than 100 gallons need not be reported, a threshold previously established by the San Francisco Bay Regional Water Board.

Excluding *de minimis* spills provides significant incentive to agencies to properly staff, equip, and implement a small response plan.

17. Certain Monitoring and Reporting Program requirements need to be clarified.

In addition to the request that mandatory PLSD reporting be removed from the proposed revisions to the SSS WDRs, several minor revisions should be made to clarify Monitoring and Reporting Program requirements:

- Item 3.I under the description of mandatory information to be included in Category 1 SSO reports, should be revised to read: "Name of surface waters impacted (if applicable and if known)..."
- Item 1.D under the minimum records to be maintained by the Enrollee, should be revised to read: "...and the complainant's name and telephone number, if known."

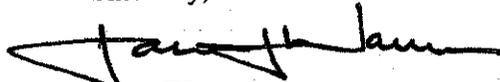
In general, it is our view that significant proposed revisions to the SSS WDRs are premature and overly burdensome. Implementation of the existing permit has already successfully resulted in reduced impacts of SSOs on surface water. Additional improvements are expected as capital improvements identified under the current permit are completed. It would be frustrating to have invested significant resources in meeting the current requirements only to have them change before our current efforts have come to fruition. We believe that it would be more productive for the Water Board to focus on bringing all agencies into compliance with the current permit rather

than initiating sweeping revisions that would apply to all agencies, regardless of compliance history or the effectiveness of current programs.

Our State is hemorrhaging under the burdens of the economic downturn, high unemployment, and historic budget shortfalls. The proposed regulations add a significant burden to agencies, which are then borne by residents and businesses. In this case, these new regulations may act to redirect resources from sewer maintenance work to burdensome administrative procedures. The benefits of the proposed changes are negligible and carry a significant cost.

Oro Loma Sanitary District hopes that the State Water Resources Control Board will take these comments under serious consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Warner", with a stylized flourish at the end.

Jason Warner
General Manager